

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

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November 30, 2004

T.R.A. DOCKET ROOM  
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*Re: Petition to Establish Generic Docket to* )  
*Consider Amendments to Interconnection* ) Docket No. 04-00381  
*Agreements Resulting from Changes of Law* )

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**COMPSOUTH'S RESPONSE TO BELL SOUTH'S "EMERGENCY MOTION"**

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In response to BellSouth's "Emergency Motion to Establish Schedule" in the above-captioned proceeding, CompSouth<sup>1</sup> submits the following response.

DISCUSSION

In the "Emergency Motion," BellSouth proposes that the TRA hear argument both on the "Emergency Motion" and on CompSouth's Motion to Dismiss following the TRA's conference on December 13, 2004. It is CompSouth's understanding, however, that the Federal Communications Commission ("FCC") intends to meet on December 15, 2004, for the purpose of announcing new, permanent unbundling rules to replace the interim rules now in effect. Following issuance of the FCC's written Order, the TRA should invite the parties to submit short pleadings addressing the impact of the FCC's new rules on this proceeding. The TRA will then be in a better position to act on both the Motion to Dismiss and the Emergency Motion. As the North Carolina Commission recently explained, "Scheduling a generic proceeding would be premature at this point, given the various contingencies involved." A copy of the North Carolina decision is attached.

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<sup>1</sup> The members of CompSouth participating in this proceeding are listed in footnote 1 of the "Motion of CompSouth to Dismiss."

Furthermore, until such time as BellSouth has filed a response to the Motion to Dismiss<sup>2</sup> and CompSouth has had the chance to file a reply, it is premature to schedule argument on the Motion. The Motion raises serious questions about whether a state commission has the power to make a wholesale revision to all existing interconnection agreements without regard to the change-of-law procedures established in those agreements.<sup>3</sup> Before embarking on a mammoth generic proceeding,<sup>4</sup> the Authority should follow the example of North Carolina and await further clarification before going further.<sup>5</sup>

Finally, BellSouth suggests that the TRA must open a generic docket because of an oral ruling by the Hearing Officer in Docket No. 04-00046 (a multi-CLEC arbitration) that the impact of the FCC's new rules will not be considered in that arbitration proceeding. Testimony has already been filed in that case and the Hearing Officer presumably decided that, rather than delay the arbitration proceedings further, the case should proceed as planned. BellSouth argues that, unless there is a generic proceeding to address the FCC's new rules, the resulting arbitration agreement arising out of Docket No. 04-00046 will be "illegal on its face" and of no use to the parties or to other CLECs which may want to adopt that agreement. Therefore, according to BellSouth, the TRA must either open a generic proceeding or the Hearing Officer's decision not to address the FCC's new rules in Docket No. 04-00046 must be reversed.

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<sup>2</sup> The Motion to Dismiss was filed on November 22, 2004. No response has been filed as of November 30, 2004

<sup>3</sup> As CompSouth noted in its Motion, the Sixth Circuit has expressly ruled that state commissions may not circumvent the arbitration process. See Verizon North, Inc. v. Strand, 309 F.3d 935, 942 (6<sup>th</sup> Cir. 2002)

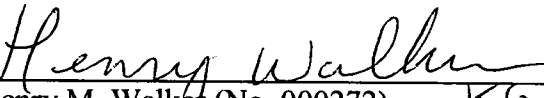

<sup>4</sup> BellSouth's suggestion that a proceeding which will impact every CLEC in Tennessee and at which each CLEC may wish to present testimony may require "only a one-day hearing" is, to say the least, unrealistic

<sup>5</sup> Given the state of uncertainty that has existed in the telecommunications industry over the last three years, it seems almost humorous to describe the present situation as a sudden "emergency."

This convoluted reasoning allows the tail to wage the dog. If the interconnection agreement approved by the TRA in Docket No. 04-00046 is subsequently impacted by changes in controlling law, the parties may invoke the change-of-law provisions in the agreement and, eventually, bring the issue to the Authority. That is the normal course of action prescribed in most interconnection agreements and the course which the TRA should take in this case as well. For these reasons, the Emergency Motion and Motion to Dismiss are not ripe for decision at this time.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

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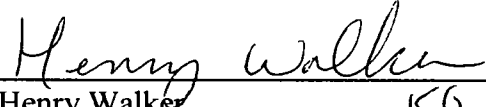
## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response was furnished by U. S. Mail to the following this 30<sup>th</sup> day of November, 2004:

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**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. P-100, SUB 133U

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Generic Proceeding to Consider Amendments to Interconnection Agreements Between BellSouth Telecommunications, Inc and Competing Local Providers Due to Changes of Law	) ) ) ) ) ) )	ORDER ESTABLISHING GENERIC DOCKET AND REQUIRING SUPPLEMENTAL INFORMATION
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BY THE CHAIR On November 4, 2004, BellSouth Telecommunications, Inc (BellSouth) filed a Petition to Establish Generic Docket to determine the changes that recent decisions from the Federal Communications Commission (FCC) and the United States Court of Appeals for the District of Columbia Circuit (DC Circuit Court) will require in existing interconnection agreements between BellSouth and competing local providers (CLPs) in North Carolina. BellSouth argued that a single generic proceeding would be preferable to 250 separate change-of-law proceedings and suggested that such a proceeding should be scheduled as soon as possible.

WHEREUPON, the Chair reaches the following

**CONCLUSIONS**

After careful consideration, the Chair concludes that good cause exists to establish the generic proceeding requested by BellSouth but that BellSouth shall provide certain supplemental information before such proceeding is scheduled.

Three considerations figure into this approach. First, the FCC has represented that it desires to have final rules in place by the end of 2004, well before the interim rules order expires in 2005. It is obviously better, other things being equal, to have final rules in place rather than interim rules before one undertakes a comprehensive change-of-law proceeding.

Second, the Commission has a heavy telecommunications workload in the immediate period to come, not the least of which is a revision of BellSouth's own price plan. Scheduling a generic proceeding would be premature at this point, given the various contingencies involved.

Finally, while there is undoubtedly substantial overlap, the universe of CLPs may not be the same as the universe of CLPs with which BellSouth has interconnection agreements in need of change. Knowing the identity of the affected CLPs and other information about their interconnection agreements with BellSouth is important for setting up a generic docket that does not include unaffected parties. Accordingly, BellSouth is directed to provide to the Commission by no later than December 3, 2004, a report (1) listing the CLPs affected by the generic docket, (2) providing citations to relevant interconnection agreement provisions, and (3) listing the expiration dates of such agreements.

IT IS, THEREFORE, SO ORDERED

ISSUED BY ORDER OF THE COMMISSION

This the 10<sup>th</sup> day of November, 2004.

NORTH CAROLINA UTILITIES COMMISSION

*Gail L. Mount*

Gail L. Mount, Deputy Clerk